

United States

Circuit Court of Appeals

For the Ninth Circuit. 4

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,
Appellants,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation, W. T. SMITH, as Receiver of said UNION LAND AND CATTLE COMPANY, Under and by Virtue of That Certain Order Given and Made by the District Court for the District of Nevada, on July 28, 1920, SILVERIA GARAT, W. T. HITT, EMMA McLAUGHLIN, HENRIETTA MOFFAT, MAUD B. CLEMONS, FRANCES C. RICKEY, W. A. DILL, W. H. FRAZER, ELIZABETH SHARP, MRS. ALOYSIUS DAVEY, and J. W. DORSEY,
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the District of Nevada.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

Messrs. McCUTCHEON, OLNEY, MANNON &
GREENE, Balfour Building, San Francisco,
Calif., and Messrs. THATCHER & WOOD-
BURN, Reno, Nevada,
For the Plaintiff in Error.

Messrs. J. W. DORSEY and W. E. CASHMAN,
Royal Insurance Building, San Francisco,
Calif., and Messrs. BROWN & BELFORD,
Reno, Nevada,
For the Defendant in Error. [1*]

In the District Court of the United States in and
for the District of Nevada.

IN EQUITY—No. B-11.

THE FIRST NATIONAL BANK OF SAN
FRANCISCO, a Corporation,
Complainant,

vs.

UNION LAND & CATTLE COMPANY, a Cor-
poration,
Defendant.

PETITION FOR PAYMENT ON LESHER
PROPERTY.

Comes now W. T. Smith, receiver of Union Land
& Cattle Company, and alleges:

*Page-number appearing at foot of page of original certified Tran-
script of Record.

That on, to wit, the 28th day of July, 1920, he was duly and regularly appointed receiver of Union Land & Cattle Company, the defendant above named, and of its property and assets, and that ever since said date he has been, and is now, the receiver of said Union Land & Cattle Company;

That heretofore and during the months of October and November, as such receiver, he paid to Messrs. Brown and Belford the sum of \$7,500.00 as a payment on account for services rendered by said firm as attorneys for the Receiver; that he paid to Mr. George K. Edler the sum of \$6,500.00 on account for services rendered by the said George K. Edler as accountant and in connection with certain tax matters involving the property and assets of said Union Land & Cattle Company; that he paid to himself on account of salary and compensation as receiver of said Union Land & Cattle Company, the sum of \$24,000.00.

And your petitioner further avers that there is due and owing to R. M. Leshner the sum of \$4,241.33 which is payable to the said R. M. Leshner on June 21, 1924, on a certain contract for the purchase of certain real property by said W. T. Smith as receiver of said Union Land & Cattle Company, which in the opinion [2] of said receiver was, and is, necessary to the land holdings and to the business of said Union Land & Cattle Company, and in this connection your petitioner alleges that heretofore he has been paid on said contract the sum of \$4,241.33 in accordance with the terms of said contract.

And your petitioner alleges that there is due and payable to Mr. Charles P. Haines the sum of \$2,000.00 for services rendered by the said Charles P. Haines for and at the request of your petitioner as counsel for your petitioner in certain tax matters affecting the estate of said Union Land & Cattle Company.

Your petitioner further alleges that all of said sums so paid were necessary to be paid in the interest of said receivership estate and that the sums which he desires to pay are necessary and proper payments to be made in the conduct of said receivership and for the benefit of said receivership estate.

WHEREFORE, your petitioner prays that upon the filing of this petition this Court may make and enter its order directing and fixing the time for the hearing of said petition and the notice to be given of the filing of said petition and of the date of its hearing, and that upon the hearing of said petition that this court shall make and enter its order approving the payments heretofore made and authorizing and directing your petitioner, as such receiver, to pay said sum of \$4,241.33 to the said R. M. Leshner and the sum of \$2,000.00 to the said Charles P. Haines.

W. T. SMITH,
Receiver, Union Land & Cattle Company.
BROWN & BELFORD,
Attorneys for Receiver. [3]

[Endorsed]: In Equity—No. B-11. In the District Court of the United States, in and for the Dis-

trict of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land & Cattle Company, a Corporation, Defendant. Petition. Filed May 26, 1924. E. O. Patterson, Clerk. Brown & Belford, Attorneys for Receiver. [4]

No. B-11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Plaintiff,

vs.

UNION LAND & CATTLE COMPANY, a Corporation,

Defendant.

MINUTES OF COURT—JUNE 20, 1924—
ENTRY ORDER APPROVING AND RATIFYING PURCHASE OF LESHER PROPERTY.

At this point Mr. Belford calls the attention of this court to the fact that on to-morrow, the last day for the final payment on the Leshner property, the receiver would either have to make said payment or throw up the contract and lose the said property on which already Six Thousand (\$6,000.00) Dollars has been made, and he asks the Court for its decision upon the hearing in this matter. Thereupon, IT IS ORDERED that the purchase of the Leshner property by the Receiver for the Union Land & Cattle Company be, and the same is hereby ap-

proved and ratified; that the purchase be completed and the final payment be made in accordance with the contract. And IT IS FURTHER ORDERED that the payments of Six Thousand (\$6,000.00) Dollars heretofore made by the receiver be, and the same is hereby approved, ratified and confirmed. [5]

In the District Court of the United States in and for the District of Nevada.

No. B-11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND & CATTLE COMPANY, a Corporation,

Defendant.

OPINION.

McCUTCHEM, OLNEY, MANNON & GREENE, HOYT, NORCROSS, THATCHER & WOODBURN, for Creditors: Old Colony Trust Company, The First National Bank of Boston, National Bank of Commerce in New York, The First National Bank of St. Louis, National Shawmut Bank of Boston, National City Bank, and First National Bank of Chicago.

Mr. J. W. DORSEY and Mr. W. E. CASHMAN,
for the Defendant and for the Receiver.

BROWN & BELFORD, for the Receiver. [6]

FARRINGTON, District Judge:

The property of the Union Land & Cattle Company has been in the hands of W. T. Smith, as receiver, since July 28th, 1920. He had on hand January 1, 1924, as much land, about 6,000 less sheep and 2300 more cattle than when he took charge of the property. He started with more than \$435,000 in bank; he has now \$98,074.10. He had paid all expenses of operation, and more than \$720,000 of the principal and interest due on secured obligations. Otherwise little or nothing has been accomplished in the way of settling the debts of the concern. For this unsettled condition the Court and the creditors, not the receiver, must be held responsible.

The order of appointment asked for and prepared by The First National Bank of San Francisco, and apparently approved by the creditors, authorized the receiver to collect all the assets of the defendant corporation, to carry on its business "according to the usual course of business of like character, and to employ such employees, accountants, agents, assistants and attorneys as he may deem necessary and proper." The reasons for such an order were thus stated in the complaint:

"That the assets of defendant if prudently operated and administered can be realized upon over a period of time in amount sufficient to

meet all of its liabilities and leave a considerable equity for the stockholders, but that the liabilities of the defendant already matured and those now about to mature cannot be met by the defendant at the present time, or as the same fall due, and defendant cannot at this time market its livestock to advantage and by reason of the present financial condition it is impossible for the defendant to get additional credit to refund its obligations due and about to become due, and the defendant is not able and will not be able to meet its obligations as they mature in the ordinary course of business.”

[7]

This was a clear and confidently expressed judgment that if the estate were prudently managed as a going business under a receivership, the liabilities could be paid and a considerable equity preserved for the stockholders.

Early in 1923 there was filed an agreement to which all or practically all creditors were parties, providing that the property in the hands of the receiver be returned to the defendant company to be managed for a number of years as a going concern by a creditors' committee consisting of attorneys and bank officials, with Warren Olney, a San Francisco lawyer, as president.

This document disclosed a belief on the part of the creditors as late as April, 1923, after three years under the receivership, that the assets of the company could not be liquidated immediately and at forced sale without loss of a large part of their

value, and that the property should be liquidated over a considerable period of time, and in an orderly manner. This cannot be construed otherwise than as a deliberately formed opinion that the business of the company should be continued during liquidation.

In May, after strenuous objection had been made to a proposed distribution of about \$100,000 of defendant's funds among a number of attorneys acting for the creditors, this agreement was abandoned.

No demand for immediate liquidation had been made up to this time, but within a few weeks, and on the 18th day of May, 1923, the First Federal Trust Company filed a petition praying that it be permitted to foreclose the mortgage or trust deed executed in 1916 by the defendant company to secure the payment of \$1,200,000 in bonds. Every installment of principal and interest on these bonds has, and at that time had been, paid promptly. The principal then due amounted to \$840,000, or thereabouts. Foreclosure was demanded on the alleged [8] ground that the appointment of a receiver constituted a violation of one of the express provisions of said trust deed. It was then stated by Mr. Olney, attorney for the Trust Company and for the plaintiff, the First National Bank of San Francisco, that foreclosure would cost from \$10,000 to \$25,000, and it was necessary, because, by reason of the default created by the appointment of the receiver, the trustees named in the trust deed were powerless to release from the lien of said deed any mortgaged lands the receiver might sell. This assumption,

kept constantly in the foreground, seems to have been sufficient to render fruitless any attempt on the part of the receiver to sell property covered by the trust deed. Would-be purchasers in view of the uncertainties, naturally were afraid to invest. Holding the lands and disposing of the livestock, except in limited numbers, was considered as not only unwise, but highly imprudent, for several reasons: First, it would "disrupt and disorganize the business of the Cattle Company"; second, large values would be lost if the lands were stripped of the livestock; third, under the express provisions of the trust deed, Article 3, Section 16, and Article 4, Section 1, it was provided if at any time the livestock was reduced in numbers below 25,000 cattle above one year of age, and 25,000 sheep on the lands of the company or under its control in the States of Nevada or California, that event would constitute a default entitling the trustees to take possession of the mortgaged property, and sell it on such terms as they might fix.

August 24th, 1923, the trustees named in the trust deed, on the ground that the appointment of the receiver constituted a default, filed herein a petition asking that the mortgaged property be surrendered to them to be sold at public auction on such terms as they might fix. Within a short time thereafter eight petitions were presented by the bank creditors, [9] approving the application of said trustees, and asserting that the trustees were "entitled to immediately sell said property described in said trust deed in the exercise of the powers

thereby granted." The prayer of the bank petitioners was that all the property of the Union Land & Cattle Company, except such thereof as may be sold by said Trust Company, be sold forthwith. Such a program involved forced sales of everything belonging to the defendant company under conditions highly unfavorable. More than a year and a half prior to this date, January 13th, 1922, the then president of the Trust Company and of the First National Bank, wrote the receiver as follows:

"The committee have come to the conclusion that we might as well call the creditors' agreement off and to take immediate steps to secure control of the company's affairs or failing in that to petition the Court for an order to sell the properties.

"The present management has never been in accord with the views of the creditors' committee and they feel that we should not allow it to continue in charge a day longer than necessary. The creditor banks will not finance the company unless they have control of the management either through a receiver, who is in accord with their views, or by actual purchase of the properties at foreclosure sale. I know there will be no change from this determination."

Every installment of interest and principal, amounting at the time to more than \$400,000, had been paid out of funds on which the Trust Company had no lien; its security seemed ample, and the alleged default consisted in the appointment of the

receiver, made by the Court without any knowledge or warning that under the terms of the trust deed such an appointment could be followed by such serious consequences. Under the circumstances it was considered by the Court and the receiver [10] that the claim of right to sell under the trust deed "was unjust and inequitable, and that if sustained on appeal it would cause irreparable loss and injury to the unsecured creditors, the very object the receivership was invoked to prevent"; furthermore if the mortgaged property were sold at public auction by the trustees, as contemplated by the petitioners, the receiver, having no place to keep the stock, if any remained in his hands, would inevitably be forced to sell it. As a rule, at such sales prices received are small as compared with the value of the thing sold. Forced sales of all the mortgaged real property would therefore have been a calamity to every creditor not able to buy, or participate in buying, the property.

Petitions for orders directing the receiver to surrender the mortgaged property to the trustees, and to sell the remaining property forthwith, were denied, and appeals were speedily taken. The issues were of such vital importance that it was deemed expedient and necessary to employ additional counsel to assist Messrs. Brown & Belford in the presentation of the receiver's cases in the Circuit Court of Appeals. Accordingly, the receiver was directed to retain Messrs. Dorsey and Cashman. They were familiar with all the evidence and the issues involved; they were also

heartily in accord, not only with the theory that the Trust Company had waived the alleged default, notwithstanding the provisions against waiver in the trust deed, but that the receivership could not be a default within the meaning of the trust deed, if, when the receiver was appointed, the court was not informed that under the trust deed such an order of appointment would constitute a default entitling the trustees to immediate possession of all the mortgaged property, with the right to sell it on such terms as they might fix. The services performed by them were not only exceedingly valuable, but they are deserving of much larger compensation [11] than the \$2500, which I here allow. To argue that their assistance was unnecessary and the employment unwise, might perhaps be regarded as depreciating the ability and legal skill of the array of eminent and confident counsel opposed to the four attorneys representing the receiver.

Trustees etc. vs. Greenough, 105 U. S. 527;
Burden Central Sugar-Refining Co. vs. Ferris
Sugar-Mfg. Co., 87 Fed. 810.

Said fee of \$2500, and the costs necessarily incurred by Messrs. Dorsey and Cashman in printing briefs, etc., will be paid by the receiver.

The purchase of the Lesher land does not at first view seem like liquidation, but on careful consideration it appears to me that its acquisition is not only vital, but that it will facilitate rather than delay sale of the Spanish Ranch. In itself it is well worth the money asked. It is in the moun-

tains and is covered with a large amount of feed; this, with its elevation, makes it valuable as summer range, and especially so in a dry year. Several hundred steers can be fattened thereon each season. It possesses a singular strategic value due to its location in the heart of a large and valuable range used and claimed in connection with the Spanish Ranch. An independent owner of the tract can graze sheep over the surrounding range in such manner as to take much of its use and value away from those who may be operating the Spanish Ranch. Incomplete control of the range, if a fact, will be given much weight by any one contemplating purchase of this portion of the property. The receiver was therefore ordered to complete the purchase of the Lesher land.

1 Tardy's Smith on Receivers, 253 et seq. [12]

The time has come when the property must be sold and its proceeds distributed among the creditors. By this it should not be understood that sales must be forced at that season of the year when there is no market, or a very poor one, or that the property is to be unnecessarily sacrificed in order that liquidation may be accomplished to-day rather than to-morrow. The interests of the unsecured creditors must be kept in view, and likewise the fact that the receiver is still confronted by the trust deed, and the restrictions contained therein. It is essential to the good title of a purchaser that the lands sold be released from the lien of the trust deed.

The provision that any reduction of the livestock

below 25,000 cattle over one year old, and 25,000 sheep, shall constitute a default entitling the trustee on notice to take possession of all the mortgaged lands and the livestock thereon, has not been abandoned. In open court the attorney for the trustees clearly and emphatically stated that the trustees proposed to stand on their rights under that instrument.

The proposal that only a limited amount of hay be put up; that the mortgaged lands be sold, subject to the lien of the bondholders, in one parcel, at public auction about December 1st, and that such livestock as cannot be disposed of at private sale, before some fixed date, be sold under the hammer, is not one which commends itself to the court.

The hay crop in Nevada will be unusually short this year. According to careful estimates there are 50,000 more cattle in this State than can be carried through the season on present supplies of feed, grass, hay, and hay to be cut. Similar conditions, owing to the extreme drought which prevails everywhere west of the Rocky Mountains, exist in all neighboring States. Hence large numbers of cattle must be sold and shipped out of Nevada. These conditions will tend [13] to reduce prices, and also to enhance the value of hay. Hay is already being contracted in the stack at \$20 per ton. The receiver has on hand 7,000 tons of old hay, and confidently asserts that he will be able to cut not less than 18,000 additional tons.

This hay can be cut and stacked at an expense of not more than three or four dollars per ton. To refuse to cut this hay is simply to throw away values which ought to go to the creditors, and to run the risk of starving large numbers of cattle. The witnesses without exception testify that the receiver should put up all the hay possible; if not consumed, it can be sold at a large profit. Failure to cut and stack the hay crop will spell nothing but loss and disaster.

The receiver is therefore directed to put up all the hay on the lands in his possession which can, in his judgment, considering the present prices of hay and the probability of a severe winter and the shortage of feed, be profitably cut and stacked.

All witnesses have testified that the liquidation ought to proceed in an orderly manner, and that the property should be sold as a unit, or in separate units, as far as possible, in order to preserve the value inhering in the property as a going concern. They also testify that much better results can be obtained by selling the livestock and the lands together, than by selling them separately; and that private sales are to be preferred to public auction.

The receiver should at once endeavor to sell each ranch or each parcel of ranch land, with its farming equipment, livestock, spring, summer and fall range, as a unit, and as a going concern.

It is not considered that the present supply of feed including the 18,000 tons of hay which can be put up, will be sufficient to carry all of the company's livestock. The receiver must therefore pre-

pare for speedy disposal, or removal [14] to other pastures, and thereafter sell at the earliest practicable date all livestock which will bring the market price, or a reasonable one, in so far as it is, in his judgment, advisable to do so, provided that he should not, without the consent of the First Federal Trust Company, or further order of the Court, make sales which will reduce the number of livestock below the limit fixed in the trust deed. The receiver has been given abundant assurance that the Trust Company will co-operate with him in any just and equitable method of closing this receivership, and disposing of the property. There is in my opinion no necessity for further litigation with that corporation, and all occasion therefore should be studiously avoided.

It is unwise to fix any date when the properties remaining in the hands of the receiver must be sold at public auction. With a property so large and herds so numerous, the natural effect of such an order will be to check private sales and depress prices. It will be sufficient to order such sale when the necessity arises. All the testimony without exception, shows there is no demand for stock cattle at the present time, and that no one wants such cattle unless he has, or knows where he can obtain, feed and hay for them during the coming winter. Cattle are of no use as beef until properly fattened for the market. At the end of a dry season like the present, cattle cannot be expected to come off the ranges in marketable condition. They must be fed before they can be sold as beef,

and this the receiver is better prepared to do than stock raisers in general. The demand for stock cattle is in the spring, in March, April and May when there is grass on the ranges. The wool and the lamb crop come in the spring. Hence the unwisdom of forcing all this property on the market at once is apparent. That it is unwise is the judgment of every witness testifying as to how the property can be most advantageously disposed of. [15]

Much must be left to the judgment of the receiver, and he is hereby directed and authorized to proceed diligently to sell the property of the Union Land & Cattle Company in his hands in accordance with his best judgment, at current prices as far as possible, and as soon as there is a market for the whole or any portion thereof, having due regard at all times to the effect of each sale on the salability and maintenance of remaining assets. When satisfactory sales cannot otherwise be effected, he may sell the property on such terms as he may deem best for the interest of all parties, provided that he shall not sell upon a longer credit than three years from the time of sale; and in all such cases he must retain ample and unquestionable security for deferred payments.

Koontz vs. Northern Bank, 16 Wall. 196.

He is also authorized to take such measures as in his judgment may be necessary to advertise the property for sale, and to procure purchasers therefor.

The following disbursements, to wit, \$7,500 to Brown & Belford and \$24,000 to W. T. Smith, are

hereby allowed and approved as payments on account.

This order is not to be regarded as fixing any specific rate of compensation.

The receiver is also authorized to pay to R. M. Leshner \$4,241.33 as the final payment on contract for the Leshner land; and the previous payments of \$1,000, \$1,000 and \$4,241.30 in the same transaction are confirmed and approved. [16]

[Endorsed]: No. B-11. In the District Court of the United States in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land & Cattle Company, a Corporation, Defendant. Opinion. Filed August 4th, 1924. E. O. Patterson, Clerk. [17]

In the District Court of the United States in and
for the District of Nevada.

No. B-11.

THE FIRST NATIONAL BANK OF SAN
FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a
Corporation,

Defendant.

ORDER AUTHORIZING RECEIVER TO MAKE
FINAL PAYMENT ON LESHER PROP-
ERTY.

This matter coming on to be heard this 19th day of June, 1924, upon the petition of W. T. Smith, Receiver of Union Land and Cattle Company, for instructions and directions as to the liquidation of the property and assets of said Union Land and Cattle Company in his possession as such receiver, and it appearing to the Court that due notice of said petition had been published and served upon the parties to the above-entitled suit and upon all creditors of said Union Land and Cattle Company, and that said petition had been duly served upon the parties to said suit, and the said receiver appearing by Brown & Belford, J. W. Dorsey and W. E. Cashman, his attorneys, the said Union Land and Cattle Company appearing by J. W. Dorsey and W. E. Cashman, its attorneys, First Federal Trust Company appearing by Jones & Dall, its attorneys, the following creditors: W. T. Hitt, Emma McLaughlin, Henrietta Moffat, Maude B. Clemmons, Frances C. Rickey, W. A. Dill, W. H. Frazer, Elizabeth Sharp, Mrs. Aloysius Davey and J. W. Dorsey appearing by J. W. Dorsey and W. E. Cashman, their attorneys, Silveria Garat, a creditor, appearing by Fred L. Dreher, her attorney; the following creditors: Old Colony Trust Company, The First National Bank of Boston, [18] National Bank of Commerce in New York, the First National Bank in St. Louis, National

Shawmut Bank of Boston, National City Bank, and First National Bank of Chicago, appearing by McCutchen, Olney, Mannon & Greene, their attorneys; and it further appearing to the court that said Old Colony Trust Company, The First National Bank of Boston, National Bank of Commerce in New York, The First National Bank in St. Louis, National Shawmut Bank of Boston, National City Bank, and First National Bank of Chicago, had filed an answer and cross-petition to the petition of said receiver, and that said Union Land and Cattle Company and W. T. Hitt, Emma McLaughlin, Henrietta Moffat, Maude B. Clemmons, Frances C. Rickey, W. A. Dill, W. H. Frazer, Elizabeth Sharp, Mrs. Aloysius Davey and J. W. Dorsey and said receiver, W. T. Smith, had filed an answer to said cross-petition of said banks in opposition to the relief prayed for in said answer and cross-petition of said banks and said petition of said receiver, W. T. Smith, being called for hearing by said court on said day, and having been heard upon the pleadings filed in said proceeding and upon the evidence offered by said receiver and by said individual creditors and said Union Land and Cattle Company, and upon the testimony of the witnesses for said parties, and the matter having been duly submitted to the Court on the 20th day of June, 1924, and the Court now being fully advised in the premises;

IT IS ORDERED that W. T. Smith, receiver of the Union Land and Cattle Company, shall proceed forthwith and as speedily as may be to sell

and dispose of the property and assets of said Union Land and Cattle Company; that such sales shall be made in accordance with his best judgment and for the best terms obtainable by him; that he is hereby authorized and directed to negotiate for such sales with such purchasers as he may be able [19] to procure, and to make and execute contracts for such sales with such purchasers, and to deliver to such purchasers any and all property purchased by them pursuant to such sales and contracts.

IT IS FURTHER ORDERED that the said W. T. Smith, as such receiver, shall be and he hereby is authorized to take such measures as in his judgment may be necessary to facilitate the sale and disposition of such property, and to cause advertisements to be published of such sales wherever deemed necessary by him.

The said W. T. Smith, as such receiver, is further directed to take such measures as may be necessary to secure the payment to him as receiver of all accounts that may be due to said Union Land and Cattle Company from the Antelope Valley Land & Cattle Company, a corporation of the State of California, and further to collect for said Union Land and Cattle Company any indebtedness that may be due to it from any other person, company or corporation.

The said W. T. Smith, as receiver, in the sale and disposition of such property and assets, is advised to proceed with such liquidation so as to sell whenever it shall be practicable, land and live-

stock together rather than separately, as going concerns, and in such units, divisions, subdivisions or parcels as may be desired by purchasers; and further, if sales may be made in this manner, the said W. T. Smith, as receiver, is hereby expressly authorized to take such measures as may be necessary to constitute or form from the property of said Union Land and Cattle Company such units, divisions, subdivisions or parcels as may be agreed upon between the said W. T. Smith and any purchaser or purchasers.

In the sale, liquidation and disposition of said property [20] and assets, the said W. T. Smith, as such receiver, is expressly directed not to commit any act which may constitute an event of default as defined in that certain deed of trust executed by the Union Land and Cattle Company to said First Federal Trust Company and Milton R. Clark, as trustees, on September 1, 1916, and that until the further order of the court, such liquidation shall proceed subject to the provisions of said deed of trust; that is to say, the receiver shall not sell, without the consent of the trustees named in said deed of trust, cattle or sheep in numbers that will reduce the number of cattle upon said lands to less than 25,000 not less than one year old, or the number of sheep upon said lands to less than 25,000. When during the liquidation of the property and assets of said Union Land and Cattle Company, the receiver shall have sold all cattle, except 25,000 head not less than one year old, and all sheep except 25,000 head, he shall immediately report such fact

to this court, and apply for further instructions concerning the subsequent liquidation of such property and assets.

The said W. T. Smith, as such receiver, is further ordered and directed, in case sales of real property are made, to negotiate with said First Federal Trust Company and Milton R. Clark, trustees, for any release or releases which it may be necessary to secure in order to effect sales of any real or other property which is subject to the lien of that certain deed of trust hereinabove referred to. This order also applies to the sale of the capital stock of the Antelope Valley Land & Cattle Company covered by said trust deed.

The said W. T. Smith, as such receiver, is further ordered and directed to harvest, cut and stack such hay as may be produced from the lands in his possession, and to use the same in feeding and properly providing for the livestock during such liquidation. If it shall be found that there is a deficiency [21] of such hay to properly care for such livestock until the liquidation thereof shall be completed, then the said W. T. Smith is directed to apply for instructions to this court with regard to all purchases of additional hay; and the said W. T. Smith is hereby authorized and directed to sell any surplus of such hay that may remain subsequent to the time of such sales of such livestock for the best terms obtainable therefor.

The said W. T. Smith, as such receiver, is hereby ordered and directed to proceed, without unnecessary delay, in the sale and liquidation of the prop-

erty and assets of the McKissick Cattle Company, a corporation of the State of Nevada, subject to the provisions of any mortgage existing upon any of its property, and such receiver is advised in such liquidation to endeavor: (1) To sell and dispose of all the capital stock of said company, if purchasers can be found therefor; (2) To sell the property of said company as a going concern, land and livestock together and as a unit; (3) To sell and dispose of said property, land and livestock together, in such subdivisions as may be desired; (4) To sell and dispose of land or livestock as the same may be salable to any purchaser. The directions and advice hereinabove given shall not be deemed or construed by the said receiver to authorize any departure by him from the terms of the option, to purchase heretofore executed to Mr. R. Keiffer, and now outstanding.

The said W. T. Smith, as such receiver, in the sale of beef cattle, is hereby directed and ordered to proceed with such sales as rapidly as such cattle can be prepared for market and in as large lots as are possible to be prepared. While such sales may be made by him in accordance with his best judgment, current market prices for the numbers of said cattle which may be offered to the market, should when practicable be obtained. [22] The same advice is given to the receiver in the sale of sheep so far as in his judgment it may be practicable.

The receiver is further expressly authorized to sell and dispose of any or all of the property of said Union Land and Cattle Company by public sale

or by public auction whenever in his judgment such sales by such methods are practicable to be made, and whenever in his judgment such sales, the element of time being considered, will or may result in better prices than may be obtained by private sales or by sales by other methods.

The said W. T. Smith, as such receiver, is hereby authorized and directed to sell and dispose of the personal property and equipment on the various ranches and properties of said Union Land and Cattle Company in any manner deemed best by him as rapidly as such personal property and equipment may reasonably be dispensed with in the operation of such properties or ranches.

The following disbursements: \$7,500 to Brown & Belford and \$24,000 to W. T. Smith, are hereby allowed and approved as payments on account. This order is not to be regarded as fixing any specific rate of compensation.

The receiver is also authorized to pay to R. M. Leshner \$4,241.33, as the final payment on contract for the Leshner Land; and the previous payments of \$1,000, \$1,000 and \$4,241.30 in the same transaction are confirmed and approved. He is also directed to pay to J. W. Dorsey and W. E. Cashman \$2,500, for services heretofore rendered the receiver in the Circuit Court of Appeals.

E. S. FARRINGTON,
District Judge. [23]

[Endorsed]: No. B-11. In the District Court of the United States in and for the District of Nevada. The First National Bank of San Francisco,

a Corporation, Complainant, vs. Union Land & Cattle Company, a Corporation, Defendant. Order. Filed August 4th, 1924. E. O. Patterson, Clerk. [24]

In the District Court of the United States in and for the District of Nevada.

IN EQUITY—No. B-11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant;

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners.

STATEMENT OF EVIDENCE.

The petition of W. T. Smith, the receiver of the above-named defendant Union Land and Cattle Company, filed in the above-entitled cause on May 26, 1924, for an order authorizing said W. T. Smith, as receiver as aforesaid, to pay R. M. Leshar the sum of Four Thousand Two Hundred Forty-one and $33/100$ (4,241.33) Dollars as a final payment on a contract for the purchase by said receiver of certain lands belonging to said Leshar, and confirming and approving previous payments of One Thousand (1,000) Dollars, One Thousand (1,000) Dollars and Four Thousand Two Hundred Forty-one and $30/100$ (4,241.30) Dollars on account of said contract, came on regularly for hearing before the Honorable E. S. Farrington, Judge of the above-entitled court, on Wednesday, the 18th day of [25] June, 1924, upon the issues raised by the said petition and the objections thereto by the above-named interveners. Upon said hearing Messrs. George S. Brown and Samuel W. Belford and Messrs. J. W. Dorsey and W. E. Cashman appeared for said receiver; and Messrs. J. W. Dorsey and W. E. Cashman appeared for said defendant Union Land and Cattle Company and for W. T. Hitt, Emma McLaughlin, Henrietta Moffat, Maud B. Clemons, Frances C. Rickey, W. A. Dill, W. H. Frazer, Elizabeth Sharp, Mrs. Aloysius Davey and J. W. Dorsey; and Fred L. Dreher, Esq., appeared for Silveria Garat, unsecured creditors of said defendant Union Land and Cattle Company; and

Messrs. McCutchen, Olney, Mannon & Greene by A. Crawford Greene, Esq., and John F. Cassell, Esq., and Messrs. Hoyt, Norcross, Thatcher & Woodburn, Esq., appeared as counsel for the above-named interveners.

Thereupon the following proceedings were had and the following testimony and evidence was presented:

Mr. BELFORD.—If the Court please, this is the time fixed for the hearing in the matter of the receivership of the Union Land and Cattle Company, for an order approving certain payments made by the receiver, and asking authority to make certain other payments, in accordance with the petition. The payments, approval of which is asked, consist of the sum of \$4,241.33 to R. M. Leshar. The petition also requests authority of the court to authorize the payment by the receiver of the further sum of \$4,241.33 to R. M. Leshar. (It was admitted by all parties that due notice of the hearing had been given.)

Now, in order that we might possibly save a little time, I would like to ask counsel whether the objection goes to all of these items, or whether there are any items to which no objection is taken?

Mr. GREENE.—We would like to have the proof made, Mr. [26] Belford.

Mr. BELFORD.—As to all of them?

Mr. GREENE.—As to all of them.

Mr. BELFORD.—Mr. Smith, will you take the stand?

The COURT.—Does anyone appear for the Trust Company?

Mr. JONES.—If your Honor please, I appear for The First Federal Trust Company; but so far as I know, in these present hearings for to-day, we are not interested. We haven't been directly served with any petitions, and I know of nothing that interests us directly at the hearing to-day. To-morrow we may appear.

Mr. BROWN.—As solicitors for The First Federal Trust Company?

Mr. JONES.—The First Federal Trust Company.

The COURT.—Then The First Federal Trust Company and the First National Bank of San Francisco, the plaintiff, are not interested in this proceeding to-day?

Mr. JONES.—Well, I do not speak for The First National Bank, because I do not represent it. I am here for The First Federal Trust Company to see what goes on, and if there is anything that affects us, we will ask permission to be heard; but so far as I am informed, there is nothing in these petitions which directly or indirectly affect The First Trust Company to-day.

TESTIMONY OF W. T. SMITH, FOR RECEIVER.

Mr. W. T. SMITH, called as a witness, after being duly sworn, testified as follows:

The WITNESS.—(On Direct Examination by Mr. BELFORD.) I am the receiver of the Union

(Testimony of W. T. Smith.)

Land and Cattle Company and have been since July 28, 1920. During that time I have conducted [27] the affairs of the Union Land and Cattle Company as receiver. I have caused to be prepared a statement of the receipts and disbursements of the Union Land and Cattle Company under my management as receiver. The statement which you hand me is the one to which I refer and it is correct. This was prepared by Mr. Frasier at my request. The receipts in 1920, for five months, were \$1,224,126.19. In 1921, \$981,858.02. In 1922, \$1,052,485.65. In 1923, \$1,145,363.69. For the first five months of 1924, \$466,964.58. Total, \$4,870,798.13. The disbursements for the last five months of 1920 were \$977,865.46. For 1921, \$1,495,315.18. For 1922, \$1,252,937.90. For 1923, \$1,111,482.91. For the first five months of 1924, \$389,190.34. Total, \$5,226,791.79. We received at the beginning of the receivership \$454,067.76; and we had on hand on the first of June, \$98,074.10. There were some transactions during this period of purchase and redemption of Government certificates, in which we invested our surplus cash, and I don't know whether those figures are included in these or not, but I think they are not. The property of the Union Land and Cattle Company, in a general way, consists of land and cattle and sheep—land and livestock. My remembrance is that the total land under the control of the receivership, including the Antelope, is 352,000 acres, about. There are approximately 40,000 head of cattle and 36,000 sheep, not counting lambs, and in

(Testimony of W. T. Smith.)

addition to that there is other livestock, like horses and so forth. I think there are about 2,600 horses. There has been practically no change in the condition I have described as to the extent of the holdings of the Union Land and Cattle Company, practically during the entire receivership. It is a very large estate, consisting of the acreage and livestock which I have described. It is divided into divisions. They are known as the Deeth Division, the Spanish Ranch Division, [28] which owns land in Elko County and in Humboldt County; what is known as the Lovelock property, which is a part of the Deeth Division, but is in Lovelock, it is hay land, about 960 acres; and then about 16,000 acres in the northern part of Washoe County, which we call the H. C. Division. And then there is about 16,000 acres in Lassen, and I don't know whether any of it is in Modoc County or not, which is known as the McKissick Division. And there is about 33,000 acres in Sacramento and Amador Counties, in California, which is also a part of the McKissick Division. And then there is approximately 80,000 acres in Mono, Douglas and Lyon Counties, Nevada, which is known as the Antelope Division. Then we have some small holdings down near Fallon, a small hay ranch; I think it is a part of the Union Land property, I am not sure about that, though, which division it belongs to; we cut a little hay down there, it is near the desert. And then we own, the McKissick Division owns an interest in some land in Lassen County, that has been carried on under the

(Testimony of W. T. Smith.)

name of John T. Long; it is a mixed up affair of John Long and the estate which I think is called the Hall Estate; we own some of the land in full, and some of it we own one-half of, and some a quarter or a third; it is a mixed up arrangement. And then the McKissick Company owns an interest in what is known as the Mapes Ranch, about 1,400 acres, which is on the east side of Honey Lake. As near as I remember that comprises our holdings.

Thereupon, two maps showing the property covered by the Leshner contract were offered and admitted in evidence as Exhibits "A" and "B" respectively for identification, and these maps are sent up with this statement by stipulation.

Mr. BELFORD.—(Q.) Mr. Smith, I hand you Exhibits "A" and "B" for identification, and I wish you would explain to the Court just what they are, referring now to Exhibit "A" for identification. [29]

(A.) This map described as Exhibit "A" is a map of the holdings of the Union Land and Cattle Company known as the Spanish Ranch Division, not including what is known as the Godchaux property, which is in Humboldt County. This is the main Spanish Ranch Division.

(Q.) You are referring to Township 41 North, Range 52 East; Township 40 North, Range 52 East; Township 39 North, Range 42 East—Townships 39, 40, 41, 42, 43 and 44?

(A.) That is the main holding of the Spanish

(Testimony of W. T. Smith.)

Ranch Division, and where the headquarters are situated. This line of forties is the bed of the Owyhee River (indicating on map).

(Q.) The line of forties running from Township 41 North, Range 52 East, to Township 42 North, Range 49 East, in a general northwesterly direction.

(A.) It is what we know as the I. L. Ranch, westerly from the I. L. Ranch.

(Q.) And Township 41 North, Range 48 East?

(A.) Is what we know as the Winters Ranch.

(Q.) It is parts of sections 8, 9, 17 and 16, in Township 41 North, Range 49 East.

(A.) This map shows, on "B."

(Q.) Referring to map "B," where does the land in there appear on Exhibit "B?"

(A.) Right here (indicating on map).

(Q.) In what color?

(A.) In yellow —, 16 and 17.

(Q.) Well, it appears in yellow on this Exhibit "B."

(A.) Yes. Township 41, Range 49.

(Q.) How many acres there? (A.) 1280.

The WITNESS.—(Continuing.) And we also have in addition the [30] land in blue that has been taken up in connection with this as an enlarged homestead. A man named De Witt took up the land appearing on this exhibit in blue and we have fenced this land in connection with this other. The necessary procedure has not been gone through with yet to enable us to get a deed for that. This

(Testimony of W. T. Smith.)

Lesher matter was brought to my attention by Mr. Calligan soon after I became receiver of the Union Land and Cattle Company. Mr. Lesher and his brother were two old miners and they owned or had located some mining claims in section known as Good Hope. It is on the north side of Tuscarora Mountain in the middle of our range that I have described as the I. L. and the Winters property. This land is located right in the middle of our range. Mr. Lesher is an old man and Mr. Calligan brought this matter to my attention in the beginning stating that Mr. Lesher wanted to sell the property. He stated that Mr. John G. Taylor had been—Mr. John G. Taylor is a stockman, cattle and sheep man, ranging his cattle and sheep in our country and he has large holdings. Mr. Lesher wanted \$15,000 for the property; I wasn't familiar with it, so I discussed the matter with Mr. F. W. Holbert. Mr. Holbert has been and was employed by the Union Land and Cattle Company. Mr. Holbert told me the circumstances of the Lesher matter and explained that he had been in consultation with Mr. Lesher with the object of buying the property for the Union Land and Cattle Company, but that Mr. Lesher wanted too much money. I think in our files there are some letters to and from Mr. Holbert and Mr. Lesher, Mr. Calligan and Mr. Lesher, and I think Mr. Moffat also. Mr. Moffat was superintendent of the Union Land and Cattle Company at that time and president of the company. I thought it was important for the Union

(Testimony of W. T. Smith.)

Land and Cattle Company, or the Spanish Ranch Division, to purchase this land from Mr. Leshar, if it could be done at a reasonable price; [31] a holding like this in the heart of our range would be very injurious to the Union Land and Cattle Company, and would permit Mr. Taylor, if he should buy it, or anyone else, to get a holding there that would in a way give them access for their cattle and sheep to the heart of this range, which was really the only valuable range by itself that we had left. I went out there on two occasions and climbed this mountain on purpose to see this property; I talked with Mr. Leshar, and we were unable to come to any agreement; I thought \$15,000 was too much. I discussed the matter with everybody that was interested; I have gone through our files; I thought I had letters that I had written to Mr. E. E. Brown about it; but I am unable to find any correspondence so the thing must have been personal conversation; but nothing came of it. We discussed the matter here with the Court, with Judge Farrington several times, and while everybody agreed we did not want to buy any land, we had all the holdings we wanted, yet we felt that it was vitally important that we should acquire possession of this in some way to prevent anyone else from getting in there. The purpose was to protect our own range for our own cattle and sheep. It ran along until some time in 1923, and Mr. Calligan wrote, and I think he told me that he thought the property could be bought for less money, that Mr.

(Testimony of W. T. Smith.)

Leshner wasn't well, and his sisters wanted him to give it up and go away. One day Mr. Calligan sent to the office a contract that he had personally made with Mr. Leshner, buying the property for \$10,000; \$1,000 at the time of making the contract; \$1,000 to be paid some few months afterwards; \$4,000 to be paid on the 21st of June, 1923; and \$4,000 to be paid on the 21st of June, 1924. Mr. Calligan stated in this that he had bought it in his own name, but that he had bought it for the Union Land and Cattle Company, and the Union Land and Cattle Company should have the property when it had [32] paid the amount, and he would deed over his right to it. Last year, some time in June before this payment matured, I made an appointment with Mr. Calligan to meet me at Winnemucca, and go to Elko and make this transfer; Mr. Calligan failed to meet me in Elko, and I was unable to reach him by any means that I had at my command; when the payment matured I paid the \$4,000 to the bank at Elko, with interest, and had Mr. Griswold in Elko transfer Mr. Calligan's title to me for the Union Land and Cattle Company, but didn't put it in the name of the Union Land and Cattle Company, because we didn't wish to involve it in the mortgage held by the First Federal Trust Company. Before the payment was made I consulted with Judge Farrington; and while he maintained the same opinion we all had, that we didn't want land, he finally said to me, "I am not familiar with this except as you tell me, I will have to trust to

(Testimony of W. T. Smith.)

you to use your own judgment," so I completed the transaction. My judgment was that it was necessary to hold that land as a protection to the range of the Spanish ranch and if it were secured by John G. Taylor or any other large livestock owner, likely to range his own cattle or sheep on this land or to get access to this tract of land, it would seriously impair the value of our range and our livestock. It was a defensive measure. I happen to refer to John G. Taylor because his name happened to be mentioned in connection with it. He had more land and he had more sheep and cattle; we had no more fear of John G. Taylor acquiring the holdings than we did of any other particular individual. We had no quarrel with Mr. Taylor; it was that the land should not go into the possession of any one else who owned sheep or cattle. That is the most valuable range land in one body that belongs to the Spanish Ranch Division, and to have some other stock man acquire that holding in there would be very detrimental to the interests of the [33] Spanish Ranch Division. Last year we ran about 8,000 ewes, the ewes were wintered on the Ione Ranch, and taken to Elko in the spring time, and they ranged over this country that is described on this map, and on the top of this mountain adjacent to the Lesher land next to the range of what used to be the Golconda Land and Cattle Company, now it is changed to the Ellison. We paid \$1,000 to Mr. Calligan and he paid it to Mr. Lesher for the rent of the property

(Testimony of W. T. Smith.)

for the year 1922. For 1923 the same amount of money was paid for rent. For 1924 no rent has been paid, or no amount has been charged in the books for any purpose on account of that. We paid \$4,000 on the purchase price last June.

There was thereupon offered in evidence and admitted as Receiver's Exhibit "C" the following contract:

RECEIVER'S EXHIBIT "C."

"MEMORANDUM OF AGREEMENT, Made and entered into this 23d day of June, 1922, by and between ROBERT M. LESHER, of Elko County, State of Nevada, party of the first part, and GEORGE H. CALLIGAN, of the same place, party of the second part:

WITNESSETH:

That said party of the first part, for *an* in consideration of the sum of One Dollar in hand paid by said party of the second part, receipt whereof being hereby acknowledged, hereby covenants and agrees with said party of the second part to sell, transfer, convey and forever set over unto said party of the second part those certain premises known as and called the Bob Leshler Ranch, situate in the County of Elko, State of Nevada, and said party of the second part hereby agrees to buy those certain premises, and particularly described as follows:

IN TOWNSHIP 41 NORTH, RANGE 49 EAST,
M. D. B. & M.

SECTION: 8: SE $\frac{1}{4}$ SE $\frac{1}{4}$

SECTION: 9: S $\frac{1}{2}$ SW

SECTION: 16: NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$;

SECTION: 17: E $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$;

SECTION: 20: NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$,
NE $\frac{1}{4}$ SW $\frac{1}{4}$

SECTION: 21: S $\frac{1}{2}$ NW $\frac{1}{4}$ [34]

Save and except the buildings and mining rights thereon. For the sum of TEN THOUSAND DOLLARS, payable as follows:

\$1,000.00 on the signing of this instrument, receipt whereof being hereby acknowledged; \$1,000.00 to be paid on or before December 1, 1922; \$4,000.00 to be paid on or before June 21, 1923; \$4,000.00 on or before June 21, 1924; all deferred payments to bear interest at the rate of 6% per annum from date until paid.

It is understood and agreed by and between the parties hereto that said party of the second part shall have immediate possession of said premises, together with all livestock, as shown in that certain bill of sale bearing even date herewith and delivered in connection therewith, it being expressly understood and agreed that said party of the second part shall pay for said cattle immediately upon receipt of said Bill of Sale at the rate of \$35.00 a head for all grown stock, calves thrown in and that the correct count of said cattle to be delivered shall be fifty-one head; that said horses shall be included

in the purchase price of said ranch, to wit, \$10,000.00.

It is further covenanted and agreed by and between the parties hereto that said party of the second part shall pay all taxes, of every name, nature, kind and description which may be levied upon and become due upon said premises herein agreed to be sold; that the installment of taxes due in December, 1922, shall be paid by said party of the second part; provided, however, that if said party of the second part does not pay said taxes, then said party of the first part may pay the same but that it shall be repaid by said party of the second part, together with interest thereon at the rate of 6% per annum from the date of payment of said taxes by said party of the first part until the date of repayment by said party of the second part to said party of the first part, before [35] the deed held in escrow by virtue of this agreement shall be tendered to said party of the second part.

It is further understood and agreed by and between the parties hereto that said party of the second part shall keep said premises in good repair, and shall do each, every and all things necessary for the protection of the water right thereon, and shall keep the ditches on said premises in good repair during the time this agreement remains in force and effect; and shall farm said premises in a good and farmerlike manner, without waste; and said party of the second part shall keep all fences on said premises in good repair; provided, however, said party of the second part need not

cut hay from said premises, but may pasture same, at his option.

It is further covenanted and agreed by and between the parties hereto that said party of the first part shall not interfere with said party of the second part using said premises, but shall confine his operations to mining, and shall not molest said party of the second part in the handling of cattle on said premises during the time this contract remains in force and effect.

It is further covenanted and agreed by and between the parties hereto that said party of the second part shall not be responsible for the repair and upkeep of said premises which have been reserved in said deed by said party of the first part.

It is further covenanted and agreed that said party of the first part shall upon the execution of this agreement make, execute and place in escrow in the Henderson Banking Company's bank, at Elko, Nevada, a good and sufficient deed, conveying and assuring good and sufficient title to the within described premises to said party of the second part, and to his heirs and assigns forever, with instructions to said Henderson Banking Company to hold said deed in escrow, [36] said deed to be delivered to said party of the second part, or his legal representative, when he or they have paid or caused to be paid to said party of the first part, or his legal representatives, the full sum of \$10,000, together with all interest due thereon, and all taxes that have been assessed against said premises, as hereinbefore specified, said deed to be delivered to

said party of the second part upon final payment of said purchase price and in accordance with the terms of this contract.

It is further understood and agreed that in the event of forfeitures hereinbefore agreed upon are made, or if any of them be made, that the deed directed to be held in escrow by said Henderson Banking Company, under and by virtue of this agreement shall be returned and delivered to said party of the first part, or his legal representatives, on his option, upon demand being made therefor, and said party of the first part may declare all sums due and payable and proceed in the collection thereof forthwith, it being expressly understood and agreed that said Henderson Banking Company shall incur no liability, either in law or in equity, by reason of said delivery or return.

It is further understood and agreed by and between the parties hereto that the failure of said party of the first part to exercise option which may accrue under this agreement, or to declare this agreement of no further force or effect and that all payments that shall have been made by said party of the second part under the terms of this agreement forfeited, shall not prevent said party of the first part from exercising such option or declaring such forfeiture on the part of said party of the second part.

This agreement to be binding upon and to inure to the benefit of the heirs and assigns of the parties hereto.

It is further understood and agreed that said

(Testimony of W. T. Smith.)

party of the [37] first part warrants the title to said premises to said party of the second part, his heirs and assigns, forever.

Time is the essence of this agreement.

IN WITNESS WHEREOF The parties hereto have hereunto set their names, the day and year in this instrumnt first written.

ROBERT M. LESHER.”

The WITNESS.—(Continuing.) The payments which were made to Mr. Lesher for rent applied on the purchase price. Two of the payments have been in the accounts and have been allowed by the Court as rent. I regard the fulfillment of that contract as a necessary thing for the estate. I concur in the opinion of Mr. Moffat and Mr. Petrie that this contract should be completed. This payment has to be made on the 21st of June, that is the 21st of this month. The accounts show that \$1,000 was paid on June 25, 1922, and \$1000 on December 1, 1922. That was not the \$4,000 payment—the \$4,000 payment was made later, the \$4,000 payment was made in June, I think it is June 22, 1923.

The WITNESS.—(Continuing Under Cross-examination by Mr. GREENE.) The impression is that the Ione Ranch has been the most profitable of the divisions of the Union. I think that the Deeth property would come next to that. As an operating proposition, the Antelope would come next. I think the H. C. is the last one of the lot, but the Spanish Ranch Division would be pretty close; in the same category. We have operated

(Testimony of W. T. Smith.)

the Spanish Ranch for pretty nearly four years and it has never paid its way. There has not been a loss every year—it seems to me the books show a profit one year, I am not sure about that. At the best not for more than one year out of the four—I do not think to amount to anything. As to whether or not I think it would be sound judgment for the receivership, which is to be terminated within what the Court of Appeals has called a [38] reasonable time, to put an additional fund of \$10,000 into the purchase of this nonprofitable property, I think it would, but only for the reasons I have stated here. There are 1280 acres of flat measurement, but some tell us that there would be 1800 acres land measurement, because the country is very steep, hilly and mountainous. It is 1280 acres as we buy it, but the actual land measurement would be greater, of course. I cannot answer as to how much the Spanish Ranch is worth, acre by acre. I cannot tell whether I could sell it for \$3.00 an acre, I doubt it now. As to whether or not I recommend the purchase on the basis of seven or eight dollars per acre of this twelve to eighteen hundred acres, I do not recommend it that way. The purchase of this Leshar land was for the reason I have stated—to keep someone else from getting into the heart of our range and destroying that range. From the time I have been familiar with the property as receiver up to the present time, I have had no difficulty whatever on account of that Leshar property from

(Testimony of W. T. Smith.)

trespassers or otherwise. Mr. Leshar did nothing to it, there was no damage; I think we rented the place from him one year before Mr. Calligan bought it. I think the vouchers for the payments to which I refer as the \$1,000 payments of June 25th and December 1st, 1922, must be in the office. The contract purports to be a contract between Mr. Leshar and Mr. Calligan. The writing under which the contract was assumed by me is in Elko. It was made by Mr. Griswold and signed by Mr. Calligan and it is in the Henderson Banking Company, in the office with Leshar's deed, which is in escrow. I have not the paper but can secure it for you and will do so. I have done nothing up to the present time with reference to turning the contract over to the Union Land and Cattle Company, together with the rights under the contract. It is in my name now. I have at all times held the legal [39] title or held whatever rights flow from the contract and have not turned them over to the Union. The reason why the usual procedure wasn't followed by filing a petition and having a hearing, advising the creditors of the proposals when the \$4,000, plus interest, was paid on account of the contract, was as I told you. I talked to Judge Farrington himself in his chambers and he told me he wasn't familiar with the land and that I would have to use my best judgment; so I went up there to get Mr. Calligan and Mr. Calligan wasn't in condition to see me or do business and I couldn't meet him and the contract matured and unless it

(Testimony of W. T. Smith.)

was paid on the date it was due, what had been paid already would have been forfeited and Mr. Leshner would have still owned the property. Afterwards, Mr. Calligan went to Elko and conveyed the property, his right, to me. I took it in my name, as I told you, to keep it from being complicated with the mortgage in San Francisco. In other similar transactions involving purchases, certainly in the channels of capital expenditure, I have made it a customary procedure to file petitions and to advise the creditors and to have a hearing with reference to such purchase. These accounts, as fast as they came, were put into Court in the usual way and the judge did not pass upon them until the time when you know, when the objections were made. They were six months behind, were not passed upon.

WITNESS.—(Continuing Under Redirect Examination by Mr. BELFORD.) If the Leshner property had been purchased then, upon the assumption it had fallen into the hands of some one like Mr. Taylor or any other large livestock owner who had utilized the range, the operations of the Spanish Ranch might have been more unprofitable than they were. The payment of the \$6,000 was made before the policy of liquidation became impending, namely, before the creditors' meeting of 1923. The acreage basis, with reference to the purchase of [40] the Leshner property, was secondary to the purchase of the property on account of the peculiar position it occupies with reference to the range. It

(Testimony of W. T. Smith.)

was the position basis which afforded the primary consideration and inducement for its purchase, rather than its acreage. It was a mere protective measure for the whole Spanish Division range. With regard to the taking over in my name of the contract that had been made, that was simply holding it as a trustee for the Union Land and Cattle Company, due to the fact of the existence of the trust deed covering real property. Somebody connected with the management, creditors or some one, suggested that that be the procedure; I don't know who did it or how it came about, but it was suggested by somebody. The benefits to be derived from that purchase were the benefits to be derived by the estate of the Union Land and Cattle Company and not by me personally in any sense of the word. Mr. Cassell asked the question at one of the hearings here a while ago if it was bought for the Union Land and Cattle Company and I replied it was.

The \$4,000 payment which I ask to have approved now was made in June, 1923. I think it was June 21, 1923.

(Q.) Now, you have suggested that the operation of the Spanish Ranch property, while unprofitable, would have perhaps been even [41] more unprofitable, had you not outstanding this purchase contract for the Lesher property; to what extent would the receipts from operation of the Spanish Ranch property been reduced had this contract not been in existence?

(A.) Can I answer the question in my own way?

(Testimony of W. T. Smith.)

(Q.) I think that is the best way, Mr. Smith.

(A.) Well, I refer to Mr. Taylor, because he happens to be the man we have mentioned; he runs on our ranges, not on our ranges but on that range up there, Spanish Ranch, from 2,500 to 4,000 head of cattle; those cattle are wintered some place down near his ranch at Lovelock; I don't know where, down there somewhere; in the spring time they bring those cattle back, they bring them in at the Winters place we have talked about here, and they turn them loose on that range there. Now, it has been our custom in the spring, when we bring our cattle back, to put them on the desert which adjoins the Winters Ranch; Mr. Taylor's cattle in case he had that home place, or whatever you want to call it, consisting of the Lesher place, would remain on that Good Hope range, and destroy the value to that extent of that range, from what we would get if he wasn't in there. That is what I mean.

(Q.) And to what would that extent go?

(A.) That I could not tell. We probably run as many cattle as he does, maybe twice as many; I don't know how many we put in there.

TESTIMONY OF H. PETRIE, FOR RECEIVER.

Mr. H. PETRIE, a witness called by receiver, after being duly sworn, testified as follows:

The WITNESS.—(Under Direct Examination by Mr. BELFORD.) I am manager of the prop-

(Testimony of H. Petrie.)

erties of the Union Land and Cattle Company under the receiver and have been for about two years and eight or nine [42] months. I am familiar with the properties of the Company and particularly the Spanish Ranch. I know where the Lesh property is and I know the circumstances of its purchase in a general way. I think the purchase was quite essential at the time and the price paid was very reasonable for the grass and the security obtained. There is no question about it in my mind that the purchase of the land was advisable to preserve the range of the Spanish Ranch Division. I absolutely think it should have been made and I think that the price paid was reasonable. In the first place, this has a considerable body of good grass land, and the high altitude where the grass remains green in ordinary years until late in the season; it protects a good many cattle, perhaps three or four hundred steers, during the time of year that you are getting them in shape to prepare them for shipment to market; steers can be thrown in there and held while the range is being worked in that locality, be held there and gain all the time. I think it is worth the money from that standpoint alone; however, eliminating that fact entirely, it was worth the purchase price for protection to the rest of the range. In explaining that, we will assume any stockman having both sheep and cattle, or either sheep or cattle, located in that locality, would get a foothold, and headquarters on this particular 1,280 acres, he could use the

(Testimony of H. Petrie.)

adjoining range for a great many head of livestock that are now under our control on account of having this property; and in addition to that, it would help close up the gap from the west, that is, the entrance from the west into the main range on Tuscarora Mountain, and those mountains surrounding Tuscarora, from any tramp bands of sheep, and so forth, encroaching, not only on this land but on land for several miles through there; it would be a great protection in that particular, because there are two miles of fence that practically closed out [43] bands from the west. It would also help to head out a great many range horses and wild horses that assemble throughout that country, that eat a great deal of feed that the Cattle Company has on this range. That would be particularly bad at this time in a season of shortage of feed, but it is very valuable at any time no matter what the season.

The WITNESS. — (Continuing Under Cross-examination by Mr. GREENE.) I have an idea if a fellow would do a little trading he might sell the land covered by the Leshner contract for \$10,000; he might even beat that price a little. I do not know whether it would be possible for the receiver, if somebody advised, to turn around and dispose of it for the amount that he paid, but I feel quite sure that is the case. If I were the owner of the Spanish Ranch, without that property, the Leshner property included within it, and were in a position where I had to sell it between two and four months

(Testimony of H. Petrie.)

from to-day, I would recommend, as a matter of business operating policy, purchasing the Lesher property at \$10,000. I would like to bring that in my statement before; I overlooked it. The property has more than \$10,000 value. I meant to bring that in; I think it adds more than the purchase price to the whole value of the property.

TESTIMONY OF W. H. MOFFAT, FOR RECEIVER.

Mr. W. H. MOFFAT, a witness called by receiver, after being duly sworn, testified as follows:

The WITNESS.—(Under Direct Examination by Mr. BELFORD.) I am president of the Union Land and Cattle Company and am familiar with the properties of the company; I am familiar with the location of what we have been discussing here to-day as the Lesher property which is now a part of the Spanish Division. I know the circumstances of its purchase. I think the purchase was advisable and [44] was a benefit to the Spanish Division. In this respect, because it is the key to that particular part of the range, I think it advisable as a protective measure and that it does, on account of its location, protect the range of the Spanish Division without a doubt. I suppose it ought to be worth the same now as then. I think it could be sold. I think if the Company wants to dispose of it, I could find a party who would buy it at what it cost the company.

(Testimony of W. H. Moffat.)

It was made to appear that included in certain accounts of the receiver which were presented for settlement on January 12, 1924, were certain items of disbursements by the receiver for payments on account of said contract; that at said hearing on January 12, 1924, interveners excepted to the allowance of said items and on May 26, 1924, on the hearing of certain subsequent accounts, the Court sustained the exceptions taken by the interveners on January 12, 1924, above referred to.

The aforesaid exceptions taken by the interveners on January 12, 1924, and sustained by the Court as aforesaid were thereupon offered and admitted in evidence and were read into the record from pages 29 and 31 of the transcript of proceedings on said hearing of January 12, 1924, and were as follows:

“Mr. CASSELL.—If your Honor please, in behalf of the complainant and the seven Bank claimants, The First National Bank of Boston, National Shawmut Bank of Boston, The First National Bank of Chicago, National City Bank, National Bank of Commerce in New York, The First National Bank of St. Louis, and Old Colony Trust Company, we desire to enter the following objections to the settlement of certain items of the account: [45]

There are a number of items in the accounts, if your Honor please, which deal with the Leshner transaction to which Mr. Smith has testified; I have not the exact numbers of those, but I can fur-

nish them to your Honor; and we enter objection to the allowance of those at the present time upon the ground that no application was made to the Court authorizing the receiver to take over the agreement, or to make the payments; no reason was shown for not making such application, and no notice was given, either formal or otherwise, to the complainant or claimants, or any of their attorneys, although opportunity was had therefor; and for that reason the item should not be allowed at this time. [47]

We also ask for an order of the Court directing the receiver not to pay any further amounts on account of the purchase of the so-called Lesher property.

The COURT.—Do you think those orders should be made, and the receiver permitted to sell that land to anyone to whom he sees fit to sell it?

Mr. GREENE.—It is entirely satisfactory to the creditors that that course be followed.

The COURT.—Suppose he sells that to some one to use as a wedge or key to this property? I would like to have something more on that than your objection, Mr. Greene. I have lived in a cattle country a good many years, and while I was never a cattle man, and never owned any stock myself, I have heard much of situations of that kind, of men being put in a position where they were almost at the mercy of someone else; the depreciation that follows from such a condition to large range rights is a serious consideration. It is one that perplexes and troubles me, and I do not feel like de-

cluding the matter on the assertion of some one that it is a good buy, and the assertion of some one else that it is objectionable.

Mr. GREENE.—Perhaps I should have in the first instance made this further explanation: The creditors feel very strongly that to take this money out of the funds to which they, along with the creditors whom I do not represent, must resort, will be, in the last analysis, simply a depletion of the fund out of which they must ultimately get their dividend. If it is a factor of moment to any one of the parties, it is one primarily to the trustee, because in our judgment, a judgment based on the best information we have, when the time comes for this property to be liquidated [49] —we hope it will be short—the liquidation of the Spanish Ranch is something with which the unsecured creditors will be absolutely unconcerned; in other words, they don't propose to bid for that ranch, and it will go to some one else. Now, to take the money which would otherwise be available for distribution to unsecured creditors as a whole, and put it into the purchase of real estate, out of which they will reap no actual benefit, is a course they don't want the Court to follow unless the Court feels impelled to do it.

Mr. CASSELL.—If your Honor please, in connection with the application of the receiver concerning the Leshner property, there were three vouchers to be put in, which accompanied the receiver's accounts, which showed the early payments,

the first payments under the Leshler contract. The first one was shown apparently in the account for June, 1922, and was covered by voucher number 20222. This voucher covered other matters, and showed among such matters a payment of \$1,000, under date of June 21, 1922; the voucher read: "Winters Ranch, Nevada, June 21, 1922, R. M. Leshler, lease of Leshler or Good Hope Ranch, in full season 1922, \$1,000," and marked "Received draft No. 9511 in payment," "R. M. Leshler, George H. Calligan." Endorsed on the face of the voucher were the letters "Land Rent," and attached to the voucher was also a check on the Union Land and Cattle Company form of check, number 9511, for \$1,000, signed George H. Calligan, in favor of R. M. Leshler. The second payment of \$1,000 is shown on the September, 1923, account, and is covered by voucher number 22114, and is for \$1132.63, and was endorsed "Land Rent." Accompanying it were a number of memoranda, showing that this payment of \$1132.63 covered the principal payment of \$1,000, and in addition to that a balance of interest and taxes paid. It showed that the [50] payment had been made by Mr. Calligan to Mr. Leshler in December of 1922, and that Mr. Leshler had directed the Union Land and Cattle Company to make repayment to Mr. W. H. Moffat, who, in turn, allowed a corresponding credit to Mr. Calligan.

The COURT.—That was in 1923.

Mr. CASSELL.—The item appeared in the September, 1923, account, at which time the reimbursement was made to Mr. Moffat, but the payment to

Mr. Leshar had been made in December, 1922. Accompanying this voucher was a check, dated September 1, 1923, in favor of W. H. Moffat, for \$1132.63, and signed by the Union Land and Cattle Company. I think with that statement of those vouchers it is unnecessary to put the vouchers themselves in.

Mr. BELFORD.—Is there any explanation you wanted in reference to those vouchers?

Mr. CASSELL.—I think that is a sufficient explanation. It shows the two vouchers were entered in the accounts at the time they were presented to the Court, and presented for the first time to the notice of the creditors of the Union Land and Cattle Company, and endorsed "Land Rent."

The final one, covering the \$4,000 payment, was included in the July, 1923, account; and simply shows a payment to Mr. W. T. Smith of \$4,241.33; and attached to it was a check in that amount from the Union Land and Cattle Company to Mr. Smith, dated July 18th, 1923. There is also attached to the voucher a letter, explaining that Mr. Smith had made a payment on account of the contract. The Court will bear in mind that all of the accounts from May, 1923, to November, 1923, were not presented until January 12, 1924.

Mr. BROWN.—Some of them were presented earlier, but not heard. [51]

Mr. CASSELL.—They had not been served.

Mr. BROWN.—Notices of them had been served.

Mr. CASSELL.—But the accounts themselves had

not been handed to us until shortly before the hearing in January, 1924. That is all.

Mr. BELFORD.—With regard to the Leshner contract, I would like to call the attention of the Court to the fact, if the money is to be paid it must be paid to-morrow, and if possible we would like a ruling upon that matter, because the time of the receiver is extremely limited to make that payment; and our understanding is that unless it is paid, we will lose not only the land, but the amounts heretofore paid will be forfeited.

The COURT.—Well, if there is nothing to be said I will dispose of it.

Mr. GREENE.—We have already voiced our objection, your Honor; we could do no more than repeat what I said before.

The COURT.—Well, the order will be that the purchase shall be completed.

Mr. GREENE.—Of course we have already told counsel, and they appreciate that we intend to appeal from that order.

The COURT.—I so understood it. It is my duty, as I understand it, to exercise my judgment, and it seems to me that a failure to purchase this land will be a very serious matter, and will depreciate the value of the range. If some tramp sheepman takes possession of that 1200 acres of land, it will be almost impossible for the company to range their cattle on that particular tract of country, and it will certainly be difficult for them to utilize that range for their sheep. It seems to me the only proper [52] way to preserve the value of that

property is to secure the 1200 acres of land. Anything you can do to facilitate the immediate presentation of the matter to the Circuit Court of Appeals will certainly be hastened and speeded in any way I can.

Mr. BELFORD.—In that connection, if the Court please, I also ask that an order be entered approving and confirming the payments heretofore made.

The COURT.—I think those have already been approved, have they not?

Mr. BELFORD.—Except the four thousand.

The COURT.—Yes, the \$2,000 has already been approved; and I understood that \$4,000 had been approved.

Mr. GREENE.—That is before your Honor now.

The COURT.—Oh that was the one to which exceptions were taken at the last hearing?

Mr. BELFORD.—Yes.

The COURT.—Well, all three payments heretofore made will be approved.

Mr. GREENE.—We note an exception. [53]

The foregoing constitutes a full and complete statement of all of the evidence, documentary and oral, offered or presented on the trial and hearing of the petition of W. T. Smith, the receiver of the above-named defendant Union Land and Cattle Company, filed in the above-entitled cause on May 26, 1924, for an order authorizing said W. T. Smith, as receiver aforesaid, to pay to R. M. Leshner the sum of four thousand two hundred forty-one and $\frac{33}{100}$ (4,241.33) dollars as a final payment on a contract for the purchase by said receiver of certain

lands belonging to said Leshar, and confirming and approving previous payments of one thousand (1,000) dollars, one thousand (1,000) dollars, and four thousand, two hundred forty-one and 30/100 (4,241.30) dollars on account of said contract, and also of all the proceedings had thereon; and the foregoing is herewith presented by the said interveners as and for their statement for use upon their appeal from the order of the above-entitled court in the above-entitled cause, made and filed on August 4, 1924, upon said petition.

Dated: October 3, 1924.

McCUTCHEON, OLNEY, MANNON &
GREENE,

THATCHER & WOODBURN,

WARREN OLNEY, Jr.,

J. M. MANNON, Jr.,

A. CRAWFORD GREENE,

GEORGE B. THATCHER,

Attorneys for Said Intervenors. [54]

STIPULATION RE STATEMENT OF EVIDENCE.

IT IS HEREBY STIPULATED by and between the respective parties hereto, as follows:

(1) That the foregoing statement is a true, complete and properly prepared statement of the evidence adduced upon the trial and hearing of the petition of W. T. Smith, the receiver of the above-named defendant Union Land and Cattle Company, filed in the above-entitled cause on May 26, 1924, for an order authorizing said W T. Smith as re-

ceiver as aforesaid, to pay to R. M. Leshner the sum of Four Thousand Two Hundred Forty-one and $33/100$ (4,241.33) Dollars as a final payment on a contract for the purchase by said receiver of certain lands belonging to said Leshner, and confirming and approving previous payments of One Thousand (1,000) Dollars, One Thousand (1,000) Dollars, and Four Thousand Two Hundred Forty-one and $30/100$ (4,241.30) Dollars on account of said contract, and of all of the said evidence, both documentary and oral, offered or presented upon said trial and hearing, and also of all the proceedings had thereon;

(2) That the foregoing statement may be approved by the above-entitled court and be settled as and for the statement to be used by the said interveners upon their appeal from the order of said Court in said cause made on August 4, 1924, upon said petition;

(3) That the foregoing statement may be used as a statement of the evidence of said Interveners upon the appeal by said interveners from the said order of August 4, 1924, granting the [55] said petition of said receiver filed May 26, 1924.

Dated: —, 1924.

McCUTCHEN, OLNEY, MANNON &
GREENE,

THATCHER & WOODBURN,
WARREN OLNEY, Jr.,
J. M. MANNON, Jr.,
A. CRAWFORD GREENE,
GEORGE B. THATCHER,

Attorneys for Said Interveners.

_____,
_____,

Attorneys for Said W. T. Smith as Receiver for
Said Union Land and Cattle Company.

_____,
Attorneys for Defendant Union Land and Cattle
Company and for W. T. Hitt, Emma, McLaugh-
lin, Henrietta Moffat, Maud B. Clemons,
Frances C. Rickey, W. A. Dill, W. H. Frazer,
Elizabeth Sharp, Mrs. Aloysius Davey and
J. W. Dorsey.

_____,
Attorney for Silveria Garat. [56]

ORDER APPROVING STATEMENT OF EVIDENCE.

Good cause appearing therefor, the foregoing statement is hereby found to be a true, complete and properly prepared statement of the evidence upon the trial and hearing of the above-mentioned petition of said receiver, filed May 26, 1924, and of all proceedings had thereon, and as such it is approved;

It is further ordered that said statement may be used by the said interveners herein upon their appeal from said order of August 4, 1924, upon said petition.

Dated: November 20th, 1924.

E. S. FARRINGTON,
United States District Judge.

[Endorsed]: No. B-11—In Equity. District Court of the United States, in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant, Old Colony Trust Company, a Corporation, et al., Interveners. Statement of Evidence for Use on Appeal by Interveners from Order Authorizing and Confirming Payment on Account of Leshner Purchase. Filed Nov. 20, 1924. E. O. Patterson, Clerk. McCutchen, Olney, Mannon & Greene, Attorneys for Interveners, Balfour Building, San Francisco, California. [57]

In the District Court of the United States, in and
for the District of Nevada.

IN EQUITY—B-11.

THE FIRST NATIONAL BANK OF SAN
FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND & CATTLE COMPANY, a Cor-
poration,

Defendant;

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners.

PETITION FOR APPEAL AND ORDER ALLOWING SAME.

To the Honorable EDWARD S. FARRINGTON,
District Judge of the United States in and for
the District of Nevada:

The above-named interveners, Old Colony Trust Company, a Corporation, The First National Bank of Boston, a National Banking Association, National Bank of Commerce in New York, a National Banking Association, The First National Bank in St. Louis, a National Banking Association, National Shawmut Bank of Boston, a National Banking Association, National City Bank, a National Banking Association, and First National Bank of Chicago, a National Banking Association, [58] and each of them, feeling themselves aggrieved by the order and decree entered in this cause on the 4th day of August, 1924, authorizing W. T. Smith, as receiver of the above-

named defendant, Union Land and Cattle Company, in the above-entitled action, to pay to R. M. Leshner the sum of Four Thousand Two Hundred Forty-one and $33/100$ Dollars (\$4,241.33) as the final payment on a contract for the purchase by said receiver of certain lands belonging to said Leshner, and confirming and approving previous payments of One Thousand Dollars (\$1,000), One Thousand Dollars (\$1,000), and Four Thousand Two Hundred Forty-one and $30/100$ Dollars (\$4,241.30) on account of said contract, do, and each of them does, jointly and severally appeal from the said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors which is filed herein, and said interveners jointly and severally pray that such appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers in said matter, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, State of California.

And your petitioners further pray that the proper order touching the security to be required of them to perfect their said appeal be made.

McCUTCHEM, OLNEY, MANNON &
GREENE,

THATCHER & WOODBURN,

WARREN OLNEY, Jr.,

J. M. MANNON, Jr.,

A. CRAWFORD GREENE,

GEORGE B. THATCHER,

Attorneys for said Intervenors. [59]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF BOND ON APPEAL.

The above petition is hereby granted and the above appeal is hereby allowed upon the said petitioners and interveners giving bond conditioned as required by law in the sum of Five Hundred Dollars (\$500).

Dated October 31st, 1924.

E. S. FARRINGTON,

Judge of the District Court of the United States for
the District of Nevada.

[Endorsed]: No. B-11—In Equity. In the District Court of the United States for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant. Old Colony Trust Company, a Corporation, et al., Intervenors. Petition for Appeal and Order Allowing Same. Filed Oct. 31, 1924. E. O. Patterson, Clerk. McCutchen, Olney, Mannon & Greene, Attorneys for Intervenors, Balfour Building, San Francisco, California [60]

In the District Court of the United States, in and
for the District of Nevada.

IN EQUITY—No. B-11.

THE FIRST NATIONAL BANK OF SAN
FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a
Corporation,

Defendant;

OLD COLONY TRUST COMPANY, a Corpora-
tion, THE FIRST NATIONAL BANK OF
BOSTON, a National Banking Association,
NATIONAL BANK OF COMMERCE IN
NEW YORK, a National Banking Associa-
tion, THE FIRST NATIONAL BANK IN
ST. LOUIS, a National Banking Association,
NATIONAL SHAWMUT BANK OF BOS-
TON, a National Banking Association, NA-
TIONAL CITY BANK, a National Bank-
ing Association, and FIRST NATIONAL
BANK OF CHICAGO, a National Bank-
ing Association,

Interveners.

ASSIGNMENT OF ERRORS.

Now come the interveners above named, Old
Colony Trust Company, a Corporation, The First
National Bank of Boston, a National Banking As-

sociation, National Bank of Commerce in New York, a National Banking Association, The First National Bank in St. Louis, a National Banking Association, National Shawmut Bank of Boston, a National Banking Association, National City Bank, a National Banking Association, and First National Bank of Chicago, a National Banking Association, and as a part of their prayer for an appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the above-entitled court made and entered herein on the [61] 4th day of August, 1924, authorizing W. T. Smith as receiver of the above-named defendant, Union Land and Cattle Company, in the above-entitled action to pay to R. M. Lesher the sum of Four Thousand Two Hundred forty-one and 33/100 Dollars (\$4,241.33) as the final payment on a contract for the purchase by said Receiver of certain lands belonging to said Lesher and confirming and approving the previous payments of One Thousand Dollars (\$1,000), One Thousand Dollars (\$1,000) and Four Thousand Two Hundred Forty-one and 30/100 Dollars (\$4,241.30) on account of said contract, tender and file this their assignment of errors, to wit:

1. Said District Court erred in said order of August 4, 1924 in authorizing said W. T. Smith as receiver of said Union Land and Cattle Company to pay to R. M. Lesher the said sum of Four Thousand Two Hundred Forty-one and 33/100 Dollars (\$4,241.33) as the final payment on the contract for the purchase by said receiver of lands belonging to

said Lesher; and in confirming and approving the previous payments of One Thousand Dollars (\$1,000), One Thousand Dollars (\$1,000) and Four Thousand Two Hundred Forty-one and 30/100 Dollars (\$4,241.30) in the same transaction, for the reason that in so doing said District Court abused its discretion;

2. Said District Court erred in said order of August 4, 1924 in authorizing said W. T. Smith to make said payments as aforesaid and in confirming and approving said previous payments because the purchase of said lands by said receiver and the making of said payments constituted an application by said receiver of funds of said Union Land and Cattle Company in his hands as such receiver to a capital investment in land and to the carrying out of a policy of continued operation in lieu of a policy [62] of retrenchment, the former course having been enjoined upon said District Court and said receiver, and the latter course having been condemned, by the Circuit Court of Appeals for the Ninth Circuit in its orders and opinions filed on April 7, 1924 in appeals Nos. 4195 and 4196;

3. Said District Court erred in said order of August 4, 1924 in authorizing said W. T. Smith as receiver as aforesaid to make said payments and in confirming and approving said previous payments, because the purchase of said property from said R. M. Lesher and the making of the said payments constituted disobedience to the opinion and mandate of the Circuit Court of Appeals for

the Ninth Circuit, dated April 7, 1924, and May 8, 1924, respectively, in appeals Nos. 4195 and 4196;

4. Said District Court erred in authorizing said receiver to make said payments and in approving and confirming said previous payments for the reason that the purchase of said lands from said R. M. Leshner and the application by said receiver of funds of the said Union Land and Cattle Company in his hands as such receiver to the payment of the purchase price thereof constituted a withdrawal of said funds so paid from a fund available to said interveners and the unsecured creditors of the Union Land and Cattle Company and a converting of said funds into real property, which would not be available to said interveners and said unsecured creditors of said Union Land and Cattle Company.

McCUTCHEEN, OLNEY, MANNON &
GREENE,

THATCHER & WOODBURN,

WARREN OLNEY, Jr.,

J. M. MANNON, Jr.,

A. CRAWFORD GREENE,

GEORGE B. THATCHER,

Attorneys for said Intervenors. [63]

[Endorsed]: In Equity—No B-11. District Court of the United States, in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant, Old Colony Trust Company a Corporation, et al., Inter-

veners. Assignment of Errors. Filed Oct. 31, 1924.
E. O. Patterson, Clerk. McCutchen, Olney, Mannon
& Greene, Attorneys for Interveners, Balfour Build-
ing, San Francisco, California. [64]

In the District Court of the United States in and
for the District of Nevada.

IN EQUITY—No. B-11.

THE FIRST NATIONAL BANK OF SAN
FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Cor-
poration,

Defendant;

OLD COLONY TRUST COMPANY, a Corpora-
tion, THE FIRST NATIONAL BANK OF
BOSTON, a National Banking Association,
NATIONAL BANK OF COMMERCE IN
NEW YORK, a National Banking Asso-
ciation, THE FIRST NATIONAL BANK
IN ST. LOUIS, A National Banking Asso-
ciation, NATIONAL SHAWMUT BANK
OF BOSTON, a National Banking Associa-
tion, NATIONAL CITY BANK, a National
Banking Association, and FIRST NA-
TIONAL BANK OF CHICAGO, a National
Banking Association,

Interveners.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, the First National Bank of Chicago, a National Banking Association, as principal, and Fidelity & Deposit Company of Maryland, as surety, acknowledge ourselves to be indebted to the above-named Union Land and Cattle Company, a corporation, W. T. Smith, as receiver thereof, Silveria Garat, W. T. Hitt, Emma McLaughlin, Henrietta Moffat, Maud B. Clemons, Frances C. Rickey, W. A. Dill, W. H. Frazer, Elizabeth Sharp, Mrs. Aloysius Davey, and J. W. Dorsey, the appellees in the above-entitled cause, in the sum of Five Hundred Dollars (\$500.00), conditioned that whereas on the 4th day of August, 1924, in the District Court of the United States for the District of Nevada, in a suit pending in that court wherein The First National Bank of San Francisco, a corporation, was complainant, and the above-named Union [65] Land and Cattle Company, a corporation, was defendant, an order and decree was rendered authorizing said W. T. Smith as receiver of the above-named defendant, Union Land and Cattle Company, in the above-entitled action to pay to R. M. Leshar the sum of Four Thousand Two Hundred Forty-one and 33/100 Dollars (\$4,241.33) as the final payment on a contract for the purchase by said receiver of certain lands belonging to said Leshar and confirming and approving the previous payments of One Thousand Dollars (\$1,000), One Thousand Dollars (\$1,000) and Four Thousand Two Hundred Forty-

one and 30/100 Dollars (\$4,241.30) on account of said contract, and the above-named interveners, Old Colony Trust Company, The First National Bank of Boston, National Bank of Commerce in New York, The First National Bank in St. Louis, National Shawmut Bank of Boston, National City Bank and First National Bank of Chicago, having been granted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit and a citation directed to said Union Land and Cattle Company, a corporation, and said W. T. Smith, as receiver of said Union Land and Cattle Company, as appellees, citing and admonishing them and each of them to be and appear at a session of the United States Circuit Court of Appeals to be holden in the City of San Francisco, State of California, on the 29th day of November, 1924 next.

Now, if said interveners shall prosecute their appeal to effect and answer all costs if they fail to make their plea good, then the above application to be void; else to remain in full force and effect.

FIRST NATIONAL BANK OF CHICAGO.

By A. CRAWFORD GREENE,

Its Attorney-in-fact.

**FIDELITY & DEPOSIT COMPANY OF
MARYLAND.**

[Seal]

By C. R. CARTER,

Its Attorney-in-fact. [66]

ORDER APPROVING BOND ON APPEAL.

The above bond is hereby approved this 31st day of October, 1924.

E. S. FARRINGTON,
Judge of the District Court of the United States in
and for the District of Nevada.

[Endorsed]: No. B-11—In Equity. In the District Court of the United States in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant. Old Colony Trust Company, a Corporation, et al., Interveners. Bond on Appeal. Filed Oct. 31, 1924. E. O. Patterson, Clerk. McCutchen, Olney, Mannon & Greene, Attorneys for Interveners, Balfour Building, San Francisco, California. [67]

In the District Court of the United States in and
for the District of Nevada.

IN EQUITY—No. B-11.

THE FIRST NATIONAL BANK OF SAN
FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant;

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners.

STIPULATION AND ORDER THAT EXHIBITS MAY BE SENT UP AS PART OF RECORD ON APPEAL.

IT IS HEREBY STIPULATED by and between the respective parties hereto that the following exhibits offered upon the trial of the petition of W. T. Smith, receiver of the above-named Union Land and Cattle Company, for an order authorizing him as such receiver to pay to R. M. Leshar the sum of Four Thousand Two Hundred Forty-one and 33/100 Dollars (\$4,241.33), as the final payment on a contract for the purchase by said receiver of certain lands belonging to said Leshar, and confirming and approving previous payments of One Thousand Dollars (\$1,000), One Thousand Dollars (\$1,000), and Four Thousand Two Hundred Forty-one and 30/100 Dollars (\$4,241.30) on account of said [68] contract, and now on file in the office of the Clerk

of the above-entitled court, may be sent up on appeal to the Circuit Court of Appeals for the Ninth Circuit as a part of the record on appeal from the order and decree entered in the above-entitled cause on August 4, 1924, granting said petition, namely the following exhibits:

Petitioners' Exhibit "A"—map of property covered by said contract;

Petitioners' Exhibit "B"—map of said property.

BROWN & BELFORD,

J. W. DORSEY and

W. E. CASHMAN,

Attorneys for Said W. T. Smith, Receiver of Said Union Land and Cattle Company.

J. W. DORSEY and

W. E. CASHMAN,

Attorneys for Defendant, Union Land and Cattle Company, and for W. T. Hitt, Emma McLaughlin, Henrietta Moffat, Maud B. Clemons, Francis C. Rickey, W. H. Dill, W. H. Frazer, Elizabeth Sharp, Mrs. Aloysius Davey and J. W. Dorsey.

McCUTCHEN, OLNEY, MANNON &
GREENE,

THATCHER & WOODBURN,

WARREN OLNEY, Jr.,

J. M. MANNON, Jr.,

A. CRAWFORD GREENE,

GEORGE B. THATCHER,

Attorneys for Said Interveners.

FRED L. DREHER and

W. E. CASHMAN,

Attorneys for Silveria Garat.

[Endorsed]: No. B-11—In Equity. In the District Court of the United States in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant. Old Colony Trust Company, a Corporation, et al., Interveners. Stipulation and Order That Exhibits may be Sent Up as Part of Record on Appeal. Filed Nov. 20, 1924. E. O. Patterson, Clerk. McCutchen, Olney, Mannon & Greene, Attorneys for Interveners, Balfour Building, San Francisco, California. [69]

In the District Court of the United States in and
for the District of Nevada.

THE FIRST NATIONAL BANK OF SAN
FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a
Corporation,

Defendant;

OLD COLONY TRUST COMPANY, a Corporation,
THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association,
NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association,
THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association,
NATIONAL SHAWMUT BANK OF

BOSTON, a National Banking Association,
NATIONAL CITY BANK, a National
Banking Association, and FIRST NA-
TIONAL BANK OF CHICAGO, a Na-
tional Banking Association,

Intervenors.

PRAECIPE FOR TRANSCRIPT OF RECORD.

The petitioners and interveners herein, Old Colony Trust Company, a corporation, The First National Bank of Boston, a National Banking Association, National Bank of Commerce in New York, a National Banking Association, The First National Bank in St. Louis, a National Banking Association, National Shawmut Bank of Boston, a National Banking Association, National City Bank, a National Banking Association, and First National Bank of Chicago, a National Banking Association, in compliance with Equity Rule No. 75, hereby indicate the portions of the record to be incorporated in the transcript upon appeal of said interveners from the order entered in the above-entitled cause on August 4, 1924, referred to in the petition [70] for appeal herein, as follows:

(1) Petition of W. T. Smith, receiver, for instructions authorizing him as receiver of the Union Land and Cattle Company to pay to R. M. Leshar the sum of Four Thousand Two Hundred Forty-one and 33/100 Dollars (\$4,241.33) as the final payment on a contract for the purchase by said receiver of certain lands belonging to said Leshar,

and confirming and approving the previous payments of One Thousand Dollars (\$1,000), One Thousand Dollars (\$1,000), and Four Thousand Two Hundred Forty-one and 30/100 Dollars (\$4,241.30) on account of said contract.

(2) Minute order dated June 20, 1924, submitting above petition for decision.

(3) Opinion covering above filed August 4, 1924.

(4) Order covering above filed August 4, 1924.

(5) Statement of evidence.

(6) Petition for appeal and order allowing same.

(7) Assignment of errors.

(8) Bond on appeal and order approving same.

(9) Citation on appeal.

(10) Stipulation concerning exhibits.

(11) This praecipe on appeal.

McCUTCHEN, OLNEY, MANNON &
GREENE,

THATCHER & WOODBURN,

WARREN OLNEY, Jr.,

J. M. MANNON, Jr.,

A. CRAWFORD GREENE,

GEORGE B. THATCHER,

Attorneys for Said Interveners. [71]

[Endorsed]: No. B-11—In Equity. In the District Court of the United States in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant. Old Colony Trust Company, a Cor-

poration, et al., Interveners. Praeceptum for Transcript of Record. Filed Oct. 31, 1924. E. O. Patterson, Clerk. McCutchen, Olney, Mannon & Greene, Attorneys for Interveners, Balfour Building, San Francisco, California. [72]

In the District Court of the United States for the
District of Nevada.

No. B-11.

THE FIRST NATIONAL BANK OF SAN
FRANCISCO, a Corporation,
Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a
Corporation,
Defendant;

OLD COLONY TRUST COMPANY, a Corporation,
THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association,
NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association,
THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association,
NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association,
NATIONAL CITY BANK, a National Banking Association, and
FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners.

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Nevada,—ss.

I, E. O. Patterson, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant, said case being No. B-11 on the docket of said court. [73]

I further certify that the attached transcript, consisting of 74 typewritten pages numbered from 1 to 74, inclusive contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein together with the endorsements of filing thereon, as set forth in the praecipe filed in said case and made a part of the transcript attached hereto, as the same appears from the originals of record and on file in my office as such clerk in the city of Carson, State and District aforesaid.

I further certify that the cost for preparing and certifying to said record, amounting to \$36.05, has been paid to me by Messrs. McCutchen, Olney, Mannon & Greene, attorneys for the interveners in the above-entitled cause.

And I further certify that the original writ of error, issued in this cause, is hereto attached.

WITNESS my hand and the seal of said United States District Court, this 28th day of November, A. D. 1924.

[Seal] E. O. PATTERSON,
Clerk U. S. District Court, District of Nevada.
[74]

In the District Court of the United States in and
for the District of Nevada.

IN EQUITY—No. B-11.

THE FIRST NATIONAL BANK OF SAN
FRANCISCO, a Corporation,
Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a
Corporation,
Defendant;

OLD COLONY TRUST COMPANY, a Corpora-
tion, THE FIRST NATIONAL BANK OF
BOSTON, a National Banking Association,
NATIONAL BANK OF COMMERCE IN
NEW YORK, a National Banking Associa-
tion, THE FIRST NATIONAL BANK IN
ST. LOUIS, a National Banking Associa-
tion, NATIONAL SHAWMUT BANK OF
BOSTON, a National Banking Association,
NATIONAL CITY BANK, a National

Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners.

CITATION.

United States of America to Union Land and Cattle Company, a Corporation, W. T. Smith, Receiver of Said Union Land and Cattle Company, Under and by Virtue of That Certain Order Given and Made by the Above-entitled Court in the Above-entitled Action on July 28, 1920, Silveria Garat, W. T. Hitt, Emma McLaughlin, Henrietta Moffat, Maud B. Clemmons, Frances C. Rickey, W. A. Dill, W. H. Frazer, Elizabeth Sharp, Mrs. Aloysius Davey, and J. W. Dorsey, GREETING:

You and each of you are hereby notified that in that certain cause in equity in the United States District Court in and for the District of Nevada, wherein The First National Bank of San Francisco, a corporation, is complainant, and Union Land and Cattle Company, a corporation, is defendant, and in which W. T. Smith was by an order of said Court duly given and made on July 28, 1920, appointed receiver of the properties of said Union Land and Cattle Company, specified in said order, an order and decree was made and entered on August 4, 1924, authorizing W. T. Smith as receiver of the above-named defendant, Union Land and Cattle Company, in the above-

entitled action to pay to R. M. Leshar the sum of Four Thousand Two Hundred Forty-one and 33/100 Dollars (\$4,241.33) as the final payment on a contract for the purchase by said receiver of certain lands belonging to said Leshar, and confirming and approving the previous payments of One Thousand Dollars (\$1,000), One Thousand Dollars (\$1,000) and Four Thousand Two Hundred Forty-one and 30/100 Dollars (\$4,241.30) on account of said contract, and an appeal to the United States Circuit Court of Appeals for the Ninth Circuit has been allowed to the above-named interveners in said cause, and each of them, from said last-mentioned order.

You, and each of you, are hereby cited and admonished to be and appear in said court at San Francisco, California, within thirty (30) days after the date of this citation, to show cause, if any there be, why the said order and decree so appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS, the Honorable EDWARD S. FARRINGTON, Judge of the United States District Court in and for the District of Nevada, this 31st day of October, 1924.

E. S. FARRINGTON,

United States District Judge.

[Seal]

Attest: E. O. PATTERSON,

Clerk.

Service of the within citation and receipt of a copy is hereby admitted this 25th day of November, 1924.

J. W. DORSEY and
W. E. CASHMAN,

Attorneys for Appellees Union Land and Cattle Company, W. T. Smith, as Receiver Thereof, W. T. Hitt, Emma McLaughlin, Henrietta Moffat, Maud B. Clemons, Frances C. Rickey, W. A. Dill, W. H. Frazer, Elizabeth Sharp, Mrs. Aloysius Davey and J. W. Dorsey.

FRED L. DREHER,
Attorney for Silveria Garat.

BROWN & BELFORD,
Attorneys for W. T. Smith, Receiver.

[Endorsed]: In Equity—No. B-11. District Court of the United States in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant; Old Colony Trust Company, a Corporation, et al., Interveners. Citation. Filed Oct. 31, 1924. E. O. Patterson, Clerk.

[Endorsed]: No. 4410. United States Circuit Court of Appeals for the Ninth Circuit. Old Colony Trust Company, a Corporation, The First National Bank of Boston, a National Banking Association, National Bank of Commerce in New York, a National Banking Association, The First Na-

tional Bank in St. Louis, a National Banking Association, National Shawmut Bank of Boston, a National Banking Association, National City Bank, a National Banking Association, and First National Bank of Chicago, a National Banking Association, Appellants, vs. Union Land and Cattle Company, a Corporation, W. T. Smith, as Receiver of Said Union Land and Cattle Company, Under and by Virtue of That Certain Order Given and Made by the District Court for the District of Nevada, on July 28, 1920, Silveria Garat, W. T. Hitt, Emma McLaughlin, Henrietta Moffat, Maud B. Clemons, Frances C. Rickey, W. A. Dill, W. H. Frazer, Elizabeth Sharp, Mrs. Aloysius Davey, and J. W. Dorsey, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Nevada.

Filed November 29, 1924.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

